Facebook users should be classed as workers and paid

The social media company makes money through data provided by millions of British users. Under employment law they are entitled to the national living wage

It is time that users of Facebook realised that the social media giant “employs” them, and as a result has legal duties.

In the modern world, data is more valuable than oil. Facebook, Google and Twitter in particular aggregate data from myriad websites to build profiles on individuals.

Facebook aggregates information with data from other websites into which it has embedded its code — or other platforms that it owns — to profile users, creating a clear picture of their behaviour, an understanding of how they will behave in the future and offering them as a target for advertising, for profit. Facebook’s profit is a direct result of the quality of user profiles.

Its users provide the labour through which Facebook delivers its services and earns its profits. It will no doubt have records of exactly how much revenue it generates from each user profile. This is what gives rise to the employment relationship.

The labour relates to the regular input of information or data about users themselves that Facebook collects, aggregates and packages for profit. The product of the Facebook factory is more than 2 billion different user profiles categorised and ready for sale. Should all users turn off their computers permanently, Facebook’s profits are likely to be adversely affected.

From the time users log on to Facebook to the time they log off is, in the employment law sense, work. That means at a minimum that users are workers under the Employment Rights Act 1996 because they work under an implied contract whereby they undertake personally to perform services for Facebook – in other words, the input of information in a sort of data entry clerk role.

There is no doubt that the work for Facebook is personal service because their terms require users to use their own names and not to give others access to their account.

However, as “workers” they are entitled to the national living wage of £8.21 an hour if they are 25 or older and less if they are between 16 and 25.

Facebook has 2.41 billion monthly active users and generated $53 billion in revenue in 2018. About 42 million users are in Britain. It is estimated that every user works on average 20-plus minutes a day, five days a week on liking, commenting and scrolling through status updates.

Many of those 42 million will be older than 25 and will log on to Facebook for one hour a week. That would be a weekly national living wage bill to Facebook of £344 million. If, say, a 10 per cent income tax was imposed on such earnings, that would mean weekly revenue to the Treasury of £34.4 million.

Regulations impose a two-year limit on backlog pay. On these figures and assumptions, if 42 million users claimed an aggregate of £853.84 over two years, that would mean a very large bill for Facebook. *Jessica Learmond-Criqui is a partner at LCS Practice, an employment law firm in London*